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1 AMENDMENTS INTENDED TO BE PROPOSED BY MR. STEVENS TO S. 958

2 Viz:

3 Strike out all after the enacting clause and insert in

4 lieu thereof the following:

5 SHORT TITLE

6 Section 1. This Act may be cited as the "Merit Pay

7 Reform Act of 1983".

8 TITLE I--PAY FOR PERFORMANCE; SENIOR EXECUTIVE SERVICE

9 MANAGEMENT

10 PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

11 Sec. 101. (a) Chapter 54 of title 5, United States Code,

12 is amended to read as follows:

13 "CHAPTER 54--PERFORMANCE RECOGNITION

"Sec.

"5401. Purpose.

"5402. Coverage.

"5403. Performance management and recognition system.

"5404. Cash award program.

"5405. Report.

"5406. Regulations.

"5407. Termination.

14 "\$ 5401. Purpose

15 "It is the purpose of this chapter to provide for a

16 performance management and recognition system which shall--

17 "(1) use performance appraisals as the basis for

18 determining basic pay and performance awards;

19 "(2) within available funds, recognize and reward

20 quality performance by varying levels of performance

21 awards;

22 "(3) within available funds, provide for training to

23 improve accuracy and fairness in the evaluation of

24 performance;

25 "(4) regulate the costs of performance awards by

26 establishing funding level restrictions; and

27 "(5) provide the means to reduce or withhold pay

28 increases for less than fully successful performance.

29 "\$ 5402. Coverage

1       “(a) Except as provided in subsections (b) and (c), this  
2 chapter shall apply to any supervisor or management official  
3 (as defined in paragraphs (10) and (11) of section 7103 of  
4 this title, respectively) who is in a position which is in  
5 GS-13, GS-14, or GS-15 of the General Schedule described in  
6 section 5104 of this title.

7       “(b)(1) Upon request filed under paragraph (3) of this  
8 subsection, the President may, in writing, exclude an agency,  
9 any unit of an agency, or any class of employees within any  
10 such unit from the application of this chapter if the  
11 President considers such exclusion to be required as a result  
12 of conditions arising from--

13           “(A) the recent establishment of the agency, unit,  
14 or class, or the implementation of a new program;

15           “(B) an emergency situation; or

16           “(C) any other situation or circumstance.

17       “(2) Any exclusion under this subsection shall not take  
18 effect earlier than 30 calendar days after the President  
19 transmits to each House of the Congress a report describing  
20 the agency, unit, or class to be excluded and the reasons  
21 therefor.

22       “(3) A request for exclusion of an agency, any unit of  
23 an agency, or any class of employees within any such unit  
24 under this subsection shall be filed by the head of the  
25 agency with the Office of Personnel Management, and shall set  
26 forth reasons why the agency, unit, or class should be  
27 excluded from the application of this chapter. The Office of  
28 Personnel Management shall review the request and reasons  
29 therefor, undertake such other review as it considers  
30 appropriate to determine whether the agency, unit, or class  
31 should be excluded from the application of this chapter, and  
32 upon completion of its review, recommend to the President  
33 whether the agency, unit, or class should be so excluded.

34       “(4) Any agency, unit, or class which is excluded

1 pursuant to this subsection shall, insofar as practicable,  
2 make a sustained effort to eliminate the conditions on which  
3 the exclusion is based.

4 "(5) The Office of Personnel Management shall  
5 periodically review any exclusion from coverage and may at  
6 any time recommend to the President that an exclusion under  
7 this subsection be revoked. The President may at any time  
8 revoke, in writing, any exclusion under this subsection.

9 "(c) This chapter shall not apply to individuals  
10 employed under the Office of the Architect of the Capitol,  
11 the Library of Congress, the Botanic Garden, or the  
12 Administrative Office of the Courts.

13 "§ 5403. Performance management and recognition system

14 "(a) In accordance with the purpose set forth in section  
15 5401 of this title, the Office of Personnel Management shall  
16 establish a performance management and recognition system  
17 which shall provide for--

18 "(1) a range of basic pay for each grade to which  
19 the system applies, which range shall be limited by the  
20 minimum and maximum rates of basic pay payable for each  
21 grade under section 5332 of this title, except as  
22 otherwise provided in this section;

23 "(2) pay increases within such range, consisting  
24 of--

25 "(A) comparability pay increases (under section  
26 5305 of this title) to the extent provided in  
27 subsection (c); and

28 "(B) periodic step-increases, as provided under  
29 subsection (d),  
30 based on performance; and

31 "(3) performance awards based on performance, as  
32 provided under subsection (e).

33 "(b) Under regulations prescribed by the Office of  
34 Personnel Management, the head of each agency shall provide

1 for increases within the range of basic pay for each employee  
2 covered by the performance management and recognition system.

3     “(c) (1) For the purposes of this subsection, the pay  
4 adjustment period applicable to an employee in any fiscal  
5 year shall be the period beginning on the first day of the  
6 first pay period applicable to the employee commencing on or  
7 after the first day of the month in which an adjustment would  
8 take effect under section 5325 of this title without regard  
9 to this section and ending at the close of the day preceding  
10 the beginning of the following pay adjustment period.

11     “(2) Determinations to provide comparability pay  
12 increases under subsection (a)(2) shall, for any pay  
13 adjustment period, be made based on the level of performance  
14 of the employee involved, as most recently determined under  
15 chapter 43 of this title. If the employee's performance is  
16 rated at--

17     “(A) either of the two levels below the fully  
18 successful level, the basic pay for the employee shall  
19 not be increased for such pay adjustment period except as  
20 provided in paragraph (3); or

21     “(B) the fully successful level or either of the two  
22 levels above fully successful, the basic pay of the  
23 employee shall be increased by the full comparability  
24 increase for such pay adjustment period.

25     “(3) If the basic pay of an employee is not increased  
26 for a pay adjustment period by reason of a performance rating  
27 at the first level below the fully successful level, the  
28 performance of such employee shall be rated again under  
29 chapter 43 of this title only for the purposes of this  
30 subsection six months after the date on which such pay  
31 adjustment period begins. If the performance of such employee  
32 during such period of six months is rated at the fully  
33 successful level or either of the two levels above the fully  
34 successful level, the basic pay of such employee shall be

1 increased for the remainder of such pay adjustment period  
2 effective on the date of the performance rating required by  
3 the first sentence of this paragraph.

4     “(4)(A) The comparability increase, for purposes of  
5 paragraph (2) or (3) of this subsection, shall be an amount  
6 equal to the basic pay of the employee involved multiplied by  
7 the percentage increase applicable to the grade of the  
8 position of such employee under section 5305 of this title at  
9 the beginning of the pay adjustment period.

10     “(B) For the purposes of determining the comparability  
11 increase applicable to an employee under subparagraph (A),  
12 such employee's rate of basic pay on the day immediately  
13 preceding the pay adjustment period involved shall be used.

14     “(d) An employee covered by this chapter shall receive  
15 periodic step-increases upon the completion of--

16         “(1) each period of 52 calendar weeks of service in  
17 pay rates 1, 2, and 3 if the performance of such service  
18 is rated under chapter 43 of this title for such period  
19 at not less than the fully successful level; and

20         “(2) (A) each period of 52 calendar weeks of service  
21 in pay rates 4 through 9 if the performance of such  
22 service is rated under such chapter two levels above the  
23 fully successful level;

24         “(B) each period of 104 consecutive calendar weeks  
25 of service in pay rates 4 through 9 if the performance of  
26 such service is rated under such chapter at not less than  
27 one level above the fully successful level for the entire  
28 period; or

29         “(C) each period of 156 consecutive calendar weeks  
30 of service in pay rates 4 through 9 if the performance of  
31 such service is rated under such chapter at not less than  
32 the fully successful level for the entire period.

33     “(e) (1) (A) If an employee's performance is rated two  
34 levels above the fully successful level, the employee shall

1 be paid a performance award in accordance with the provisions  
2 of this subsection.

3     “(B) If an employee's performance is rated one level  
4 above the fully successful level, the employee may be paid a  
5 performance award in accordance with the provisions of this  
6 subsection.

7     “(C) Any award paid under this paragraph shall be in  
8 addition to any increase in basic pay provided under  
9 subsection (c) or (d).

10     “(2) A performance award under this subsection may be  
11 made to an employee in such amount as the head of the agency  
12 considers appropriate, except that any such award may not  
13 exceed an amount equal to 20 percent of the rate of basic pay  
14 payable to such employee.

15     “(3)(A) For any fiscal year, the head of any agency may  
16 exercise authority under this subsection only to the extent  
17 of the funds available for the purposes of this subsection.

18     “(B) Performance awards under this subsection shall be  
19 paid from funds or appropriations available to the agency for  
20 pay of employees.

21     “(C) Subject to the limitation on the maximum amount  
22 which may be paid as a performance award set forth in  
23 paragraph (2) of this subsection, in each fiscal year an  
24 agency shall pay performance awards under this subsection in  
25 a total amount equal to not less than one percent of the  
26 aggregate amount of basic pay which is payable to the  
27 employees of the agency who are covered by the performance  
28 management and recognition system for such fiscal year. The  
29 aggregate amount of performance awards payable under this  
30 subsection in any fiscal year shall be determined by the  
31 Office of Personnel Management before the beginning of such  
32 fiscal year.

33     “(4) A failure to pay a performance award authorized by  
34 paragraph (1) (B) of this subsection may not be appealed.

1       “(f) Except as provided in subsection (g) of this  
2 section, any employee whose position is brought under the  
3 performance management and recognition system shall, for as  
4 long as the employee continues to occupy the position, be  
5 entitled to receive basic pay at a rate of basic pay not less  
6 than the rate the employee was receiving when the position  
7 was brought under the performance management and recognition  
8 system.

9       “(g) Under this section, an employee may be paid less  
10 than the minimum rate of basic pay of the grade of the  
11 employee's position to the extent that payment of the lesser  
12 amount is the result of a performance evaluation of less than  
13 fully successful.

14       “(h) Under regulations prescribed by the Office of  
15 Personnel Management, the benefit of advancement through the  
16 range of basic pay for a grade shall be preserved for any  
17 employee who is covered by the performance management and  
18 recognition system and whose continuous service is  
19 interrupted in the public interest by service in the Armed  
20 Forces, or by service in essential non-Government civilian  
21 employment during a period of war or national emergency.

22       “(i) For the purpose of section 5941 of this title,  
23 rates of basic pay of employees covered by the performance  
24 management and recognition system shall be considered rates  
25 of basic pay fixed by statute.

26       “§ 5404. Cash award program

27       “(a) The head of any agency may pay a cash award to, and  
28 incur necessary expenses for the honorary recognition of, any  
29 employee covered by the performance management and  
30 recognition system who--

31               “(1) by the employee's suggestion, invention,  
32 superior accomplishment, or other personal effort,  
33 contributes to the efficiency, economy, or other  
34 improvement of Government operations or achieves a



1 significant reduction in paperwork; or  
2 "(2) performs a special act or service in the public  
3 interest in connection with or related to the employee's  
4 Federal employment.

5 "(b) The President may pay a cash award to, and incur  
6 necessary expenses for the honorary recognition of, any  
7 employee covered by the performance management and  
8 recognition system who--

9 "(1) by the employee's suggestion, invention,  
10 superior accomplishment, or other personal effort,  
11 contributes to the efficiency, economy, or other  
12 improvement of Government operations or achieves a  
13 significant reduction in paperwork; or

14 "(2) performs an exceptionally meritorious special  
15 act or service in the public interest in connection with  
16 or related to the employee's Federal employment.

17 A Presidential cash award may be in addition to an agency  
18 cash award under subsection (a) of this section.

19 "(c) A cash award to any employee under this section is  
20 in addition to the basic pay of the employee under section  
21 5403 of this title. Acceptance of a cash award under this  
22 section constitutes an agreement that the use by the  
23 Government of any idea, method, or device for which the award  
24 is made does not form the basis of any claim of any nature  
25 against the Government by the employee accepting the award,  
26 or the employee's heirs or assigns.

27 "(d) A cash award to, and expenses for the honorary  
28 recognition of, any employee covered by the performance  
29 management and recognition system may be paid from the fund  
30 or appropriation available to the activity primarily  
31 benefiting, or the various activities benefiting, from the  
32 suggestion, invention, superior accomplishment, or other  
33 meritorious effort of the employee. The head of the agency  
34 concerned shall determine the amount to be contributed by

1 each activity to any agency cash award under subsection (a)  
2 of this section. The President shall determine the amount to  
3 be contributed by each activity to a Presidential award under  
4 subsection (b) of this section.

5 "(e) (1) Except as provided in paragraph (2) of this  
6 subsection, a cash award under this section may not exceed  
7 \$10,000.

8 "(2) If the head of any agency certifies to the Office  
9 of Personnel Management that the suggestion, invention,  
10 superior accomplishment, or other meritorious effort of an  
11 employee for which a cash award is proposed is highly  
12 exceptional and unusually outstanding, a cash award in excess  
13 of \$10,000 but not in excess of \$25,000 may be awarded to the  
14 employee on the approval of the Office.

15 "(f) The President or the head of an agency may pay a  
16 cash award under this section notwithstanding the death or  
17 separation from the service of an employee, if the  
18 suggestion, invention, superior accomplishment, or other  
19 meritorious effort of the employee for which the award is  
20 proposed was made or performed while the employee was covered  
21 by the performance management and recognition system.

22 "§ 5405. Report

23 "The Office of Personnel Management shall submit an  
24 annual report to the President and each House of Congress  
25 evaluating the effectiveness of the performance management  
26 and recognition system. Each such report shall be prepared  
27 after consultation with the respective heads of a sufficient  
28 range of agencies so as to permit an adequate basis for  
29 making a meaningful evaluation.

30 "§ 5406. Regulations

31 "The Office of Personnel Management shall prescribe  
32 regulations to carry out the purpose of this chapter.

33 "§ 5407. Termination.

34 "The performance management and recognition system

1 established pursuant to section 5403 of this title and the  
2 requirement of section 5405 of this title (relating to the  
3 annual report of the Office of Personnel Management on such  
4 system) shall not be effective after the date which is five  
5 years after the date of enactment of the Merit Pay Reform Act  
6 of 1983.''.  
7

8 (b) The table of chapters at the beginning of part III of  
9 such title is amended by striking out the item relating to  
10 chapter 54 and inserting in lieu thereof the following:

11 ``54. Performance Recognition..... 5401''.

12 PERIODIC STEP-INCREASES

13 Sec. 102. Section 5335 of title 5, United States Code, is  
14 amended by striking out subsection (e) and inserting in lieu  
15 thereof the following:

16 ``(e) This section does not apply to the pay of an  
17 individual appointed by the President, by and with the advice  
18 and consent of the Senate.

19 ``(f) Notwithstanding clauses (1), (2), and (3) of  
20 subsection (a) of this section, employees covered by the  
21 performance management and recognition system under chapter  
22 54 of this title shall be advanced in pay only as provided in  
23 section 5403(d) of this title.''.  
24

25 PERFORMANCE APPRAISAL SYSTEM

26 Sec. 103. (a) Chapter 43 of title 5, United States Code,  
27 relating to performance appraisals, is amended by inserting  
28 after section 4302 the following new section:

29 ``§ 4302a. Establishment of performance appraisal systems for  
30 performance management and recognition system  
31 employees

32 ``(a) Each agency shall develop a performance appraisal  
33 system for employees covered by the performance management  
34 and recognition system established under section 5403 of this  
35 title which--

36 ``(1) provides for periodic appraisals of job

1 performance;

2 "(2) requires that the supervising official consult  
3 with the employee before establishing performance  
4 standards; and

5 "(3) is suitable for use in setting the basic pay  
6 and performance awards for an employee in accordance with  
7 section 5403 of this title.

8 "(b) Under regulations which the Office of Personnel  
9 Management shall prescribe, each performance appraisal system  
10 under this section shall--

11 "(1) provide for five levels of performance ratings  
12 as follows:

13 "(A) two levels which are below fully  
14 successful;

15 "(B) a fully successful level; and

16 "(C) two levels which are above fully  
17 successful;

18 "(2) provide for establishing performance standards  
19 and critical elements which will, to the maximum extent  
20 feasible, permit the accurate evaluation of job  
21 performance;

22 "(3) require each supervisor of an employee covered  
23 by the performance management and recognition system to  
24 discuss with each such employee, before the beginning of  
25 each appraisal period, the performance standards and  
26 critical elements applicable to the employee's position  
27 during such appraisal period;

28 "(4) provide for evaluating each such employee on  
29 the basis of such standards during the appraisal period;

30 "(5) provide for assisting such employees in  
31 improving less than fully successful performance;

32 "(6) provide for reducing in grade or removing any  
33 such employee who continually perform at the  
34 unsatisfactory level, after providing an opportunity to

1 perform at the fully successful level; and

2 "(7) provide for making decisions to increase a rate

3 of basic pay or to make a performance award based on

4 annual performance appraisals made under this section.

5 "(c) Appraisals of performance under this section--

6 "(1) shall take into account--

7 "(A) individual performance;

8 "(B) any improvement in efficiency,

9 productivity, and quality of work or service,

10 including any significant reduction in paperwork;

11 "(C) cost efficiency;

12 "(D) timeliness of performance; and

13 "(E) other indications of the effectiveness,

14 productivity, and quality of performance of the

15 appraised employee or other employees for whom the

16 appraised employee is responsible;

17 "(2) may take into account organizational

18 accomplishment;

19 "(3) shall be subject to review only within the

20 agency of the employee and only in accordance with and to

21 the extent provided by procedures established by the

22 Office of Personnel Management; and

23 "(4) may not be appealed outside the agency.

24 "(d) In carrying out this section, the Office of

25 Personnel Management and an agency may not prescribe a

26 distribution of levels of performance ratings for employees

27 covered by chapter 54 of this title before the performance of

28 each such employee is rated.

29 "(e) The Office of Personnel Management may not

30 prescribe or require agencies to prescribe any specific

31 performance standard or element for the purposes of this

32 section."

33 (b) The table of sections for chapter 43 of such title is

34 amended by inserting after the item relating to section 4362

1 the following new item:

    ``4302a. Establishment of performance appraisal systems for performance management and recognition system employees.''.  
2

    SENIOR EXECUTIVE SERVICE AMENDMENTS

3 Sec. 104. (a) Section 3135 (a) of title 5, United States  
4 Code, is amended--

5 (1) by striking out ``and'' at the end of clause (8);

6 (2) by redesignating clause (9) as clause (10); and

7 (3) by inserting before clause (10) (as redesignated

8 by clause (2) of this subsection) the following:

9 `` (9) the number of career appointees who have been  
10 placed in a position outside the Senior Executive Service  
11 under section 3594 of this title as a result of a removal  
12 under section 3595 of this title; and''.

13 (b) Section 3592 (a) of such title is amended--

14 (1) by striking out ``or'' at the end of clause (1);

15 and

16 (2) by inserting after clause (2) the following:

17 `` (3) as a result of a reduction in force under  
18 section 3595 of this title, ''.

19 (c) Section 3593 of such title is amended by striking out  
20 subsection (c).

21 (d) (1) Subsection (b) of section 3594 of such title is  
22 amended to read as follows:

23 `` (b) A career appointee who has completed the  
24 probationary period under section 3393 (d) of this title and  
25 who--

26 `` (1) is removed from the Senior Executive Service  
27 for less than fully successful executive performance as  
28 determined under subchapter II of chapter 43 of this  
29 title; or

30 `` (2) is removed from the Senior Executive Service as  
31 a result of a reduction in force under section 3595 of  
32 this title,

1 shall be entitled to be placed in a civil service position  
2 (other than a Senior Executive Service position) in any  
3 agency.''.  
4

5 (2) Subsection (c) (1) (E) of such section is amended by  
6 striking out ``subsection (a) or (b) of this section'' the  
7 first place it appears and inserting in lieu thereof  
8 ``subsection (a) of this section, other than by reason of  
9 unacceptable performance, or under subsection (b) (2) of this  
10 section''.

11 (e) (1) Subsection (b) of section 3595 of such title is  
12 amended by striking out paragraphs (2), (3), (4), and (5) and  
13 inserting in lieu thereof the following:

14 `` (2) A career appointee may be removed from the Senior  
15 Executive Service due to a reduction in force within an  
16 agency only if the appointee is not assigned to a Senior  
17 Executive Service position under paragraph (3) of this  
18 subsection.

19 `` (3) A career appointee who, but for this paragraph,  
20 would be removed from the Senior Executive Service due to a  
21 reduction in force within an agency is entitled to be  
22 assigned by the head of that agency to a vacant Senior  
23 Executive Service position for which the career appointee is  
24 qualified.''.  
25

26 (2) Such section is further amended by striking out  
27 subsection (c) and inserting in lieu thereof the following:

28 `` (c) (1) A career appointee is entitled to appeal a  
29 termination of any benefits available to the career appointee  
30 under section 3594 of this title in the same manner and on  
31 the same grounds as is provided in section 5366 of this  
32 title.

33 `` (2) In applying section 5366 of this title in the case  
34 of a career appointee for the purposes of paragraph (1) of  
35 this subsection--

36 `` (A) grade GS-15 shall be considered to be the

1 retained grade of the career appointee;

2 "(B) the rate of basic pay provided under section  
3 3594 (c) (1) (B) of this title shall be considered to be  
4 the retained pay of the career appointee; and

5 "(C) the term 'benefits under this subchapter', as  
6 used in section 5366 of this title, shall be considered  
7 to refer to the benefits available under section 3594 of  
8 this title."

9 (3) Subsection (d) of such section is amended by adding  
10 at the end thereof the following new sentence: "The term  
11 does not include the elimination or modification of a  
12 position due to a determination that a position does not meet  
13 the definition for a Senior Executive Service position  
14 provided in section 3132 (a) of this title because of a  
15 change in duties or responsibilities or because of a finding  
16 that the position was initially incorrectly designated as a  
17 Senior Executive Service position."

18 (f) (1) Subchapter V of chapter 35 of such title is  
19 amended by adding at the end thereof the following new  
20 sections:

21 "\$ 3597. Furlough in the Senior Executive Service

22 "(a) For the purposes of this section, the term  
23 'furlough' means the placement of a senior executive in a  
24 temporary status in which the senior executive has no duties  
25 and is not paid when the placement in such status is by  
26 reason of insufficient work or funds or for other  
27 nondisciplinary reasons.

28 "(b) An agency may furlough a career appointee only  
29 pursuant to regulations issued by the Office of Personnel  
30 Management.

31 "(c) A career appointee who is furloughed is entitled to  
32 appeal his status to the Merit Systems Protection Board under  
33 section 7701 of this title.

34 "\$ 3598. Reassignment notice



1        ``The head of an agency reassigning any career appointee  
2 outside the career appointee's commuting area under this  
3 chapter shall transmit to the career appointee reasonable  
4 advance notice of the reassignment. The notice shall include  
5 a statement setting forth valid management reasons for the  
6 reassignment.''.  
7

8        (2) The table of sections at the beginning of such  
9 chapter is amended by inserting after the item relating to  
10 section 3596 the following new items:

11        ``3597. Furlough in the Senior Executive Service.  
12        ``3598. Reassignment notice.''.  
13

14        (g) (1) Subsection (b) (2) of section 5384 of such title  
15 is amended by striking out ``exceed'' and inserting in lieu  
16 thereof ``be less than 3 percent nor more than''.  
17

18        (2) Subsection (b) (3) of such section is amended to read  
19 as follows:

20        `` (3) The total amount of performance awards paid during  
21 a fiscal year by an agency under this section may not exceed  
22 3 percent of the aggregate payroll for career appointees in  
23 the agency.''.  
24

25        (h) Section 7543 (a) of such title is amended by striking  
26 out ``or malfeasance'' and inserting in lieu thereof  
27 ``malfeasance, or failure to accept a directed reassignment  
28 or to accompany a position in a transfer of function''.  
29

30        (i) The Office of Personnel Management shall, after  
31 notice and hearing, prescribe regulations to carry out  
32 section 3595 of such title (as amended by subsection (e) of  
33 this section).  
34

35        (j) Subsection (d) of section 8336 of such title is  
36 amended by inserting after paragraph (1) the following: ``For  
37 the purposes of paragraph (1) of this subsection, separation  
38 for failure to accept a directed reassignment or to accompany  
39 a position in a transfer of function shall not be considered  
40 to be a removal for cause on charges of misconduct or  
41 delinquency.''.  
42

1 MISCELLANEOUS CONFORMING AMENDMENTS

2 Sec. 105. (a) Title 5, United States Code, is further  
3 amended--

4 (1) in sections 4501(2)(A), 5332(a), 5334(f), and  
5 5336(c), by striking out ``the merit pay system  
6 established under section 5402`` each place it appears  
7 and inserting in lieu thereof ``the performance  
8 management and recognition system established under  
9 section 5403``;

10 (2) in section 5361(5), by striking out ``merit pay  
11 system`` and inserting in lieu thereof ``performance  
12 management and recognition system``; and

13 (3) in section 5948(g)(1)(C), by striking out ``Merit  
14 Pay System`` and inserting ``performance management and  
15 recognition system``.

16 (b) Section 1602 of title 10, United States Code, is  
17 amended by striking out ``5401(a)`` and inserting in lieu  
18 thereof ``5401``.

19 (c) Section 731 (b) of title 31, United States Code, is  
20 amended by striking out ``5401(a)`` and inserting in lieu  
21 thereof ``5401``.

22 TITLE II--EXPERIMENTAL PAY FOR PERFORMANCE PROGRAM

23 DEFINITIONS

24 Sec. 201. For the purposes of this section--

25 (1) ``agency`` has the same meaning as provided in  
26 section 7103 (a) (3) of title 5, United States Code,  
27 except that the term does not include the Library of  
28 Congress or the Government Printing Office;

29 (2) ``employee`` has the same meaning as provided in  
30 section 2105 of title 5, United States Code;

31 (3) ``exclusive representative`` has the same meaning  
32 as provided in section 7103 (a) (16) of title 5, United  
33 States Code;

34 (4) ``labor organization`` has the same meaning as

1 provided in section 7103 (4) of title 5, United States  
2 Code;

3 (5) "negotiate", when used with respect to matters  
4 required or authorized by this title to be negotiated,  
5 means to meet at reasonable times and to consult and  
6 bargain in a good faith effort to reach agreement with  
7 respect to such matters, but does not include an  
8 obligation to agree to a proposal or to make a  
9 concession;

10 (6) "Office" means the Office of Personnel  
11 Management;

12 (7) "panel" means any panel appointed pursuant to  
13 section 207 (b); and

14 (8) "reduction-in-force procedures" has the same  
15 meaning as provided in section 5361 (7) of title 5,  
16 United States Code.

17 ESTABLISHMENT OF EXPERIMENTAL PROGRAM

18 Sec. 202. (a) The Office shall, subject to subsection (b)  
19 (3), establish an experimental program to develop, test, and  
20 evaluate innovative systems under which the performance of  
21 employees is appraised, employees are financially rewarded  
22 based on the appraisal of the job performance of the  
23 employees, and employees are selected for release during a  
24 reduction in force based on the appraisal of the job  
25 performance of the employees. The experimental program shall  
26 consist of a series of demonstration projects. Subject to  
27 subsection (b), the Office shall select the agencies,  
28 occupations, and grades which shall be included in each  
29 demonstration project.

30 (b) (1) The experimental program shall include not less  
31 than 150,000 employees, at least 50 percent of whom are  
32 employed in units in which an exclusive representative is  
33 accorded exclusive recognition under section 7111 of title 5,  
34 United States Code.

1 (2) The experimental program shall include a wide range  
2 of agencies, occupations, grades, and geographical areas.

3 (3) A demonstration project may not be carried out under  
4 the experimental program required by subsection (a) in any  
5 unit in which an exclusive representative is accorded  
6 exclusive recognition under section 7111 of title 5, United  
7 States Code, unless the agency in which the unit is located  
8 and the national office of the labor organization which is  
9 the exclusive representative for the unit in such agency  
10 agree to be included in the demonstration project.

11 (4) The experimental program and a demonstration project  
12 under such program may not limit any right of an employee to  
13 appeal or to require review of an administrative action, as  
14 provided by law.

15 (c) Not later than 15 days before the date on which the  
16 Office commences a demonstration project under this section,  
17 the Office shall transmit to the Committee on Governmental  
18 Affairs of the Senate and the Committee on Post Office and  
19 Civil Service of the House of Representatives a notice of the  
20 intention to commence the demonstration project. The notice  
21 shall include a description of the objectives and elements of  
22 the demonstration project.

### 23 PERFORMANCE APPRAISAL SYSTEM

24 Sec. 203. Each performance appraisal system developed,  
25 tested, and evaluated in demonstration projects carried out  
26 under section 202 shall provide for the establishment of such  
27 performance standards for each employee or position under the  
28 system as will insure, to the maximum feasible extent, that  
29 the evaluations of job performance are accurate and are based  
30 on specific and objective criteria which are related to the  
31 job evaluated. The performance standards shall provide a  
32 description of the level of achievement expected in the  
33 performance of the duties and responsibilities assigned to  
34 the employee, position, or group of employees or positions

1 evaluated including, in applicable cases, the level of  
2 achievement expected for such factors as quality, quantity,  
3 timeliness, manner, efficiency, and effectiveness.

4 FINANCIAL REWARD SYSTEM

5 Sec. 204. (a) The financial reward system developed,  
6 tested, and evaluated in a demonstration project carried out  
7 under section 202 shall be based on the principle that those  
8 employees whose job performance is superior should be  
9 rewarded financially for the superior performance. In  
10 applying the principle and providing financial rewards under  
11 the system, the performance appraisal system developed,  
12 tested, and evaluated under the demonstration project shall  
13 be used to determine the job performance of the employees.

14 (b) (1) The financial reward system may provide for--

15 (A) fixing pay within the range of minimum and  
16 maximum rates of basic pay payable for each grade under  
17 section 5332 of title 5, United States Code, including  
18 provisions for step-increases in pay; and

19 (B) making performance monetary awards totaling not  
20 more than one and one-half percent of the total amount of  
21 the payroll of the agency to which the system applies.

22 (2) Any financial award system including provisions for  
23 fixing pay shall include provisions for making within-grade  
24 increases.

25 (c) (1) The total amount of the step-increases in pay  
26 paid in any fiscal year to the employees of any agency which  
27 is under a financial reward system provided under a  
28 demonstration project carried out under section 202 may not  
29 exceed the amount computed by multiplying the percentage  
30 determined under paragraph (2) by the total payroll of such  
31 agency at the beginning of such fiscal year.

32 (2) The percentage applicable to an agency for the  
33 purpose of paragraph (1) in any fiscal year shall be equal to  
34 the percentage increase--

1 (A) in the total payroll of such agency at the end of  
2 the preceding fiscal year, over

3 (B) the total payroll of such agency at the end of  
4 the next preceding fiscal year,

5 which is attributable to step-increases in pay paid to the  
6 employees of such agency during the preceding fiscal year.

7 (d) Notwithstanding any other provision of this  
8 subsection, the rate of basic pay of an employee included in  
9 a demonstration project under section 202 may not be less  
10 than the rate of basic pay payable to such employee on the  
11 day before the date on which the demonstration project  
12 commences, as adjusted on or after such day under section  
13 5305 of title 5, United States Code, or under any other law  
14 providing a similar pay comparability system.

15 REDUCTION-IN-FORCE PROCEDURES

16 Sec. 205. (a) Subject to subsection (b) and section 206  
17 (a) (3), reduction-in-force procedures may be changed in  
18 carrying out any demonstration project under section 202.

19 (b) In the case of a demonstration project which provides  
20 for changes in reduction-in-force procedures in a unit of  
21 employees which is not represented by an exclusive  
22 representative, seniority and performance appraisal shall be  
23 considered in selecting employees for release under such  
24 procedures.

25 NEGOTIATION OF PROVISIONS OF DEMONSTRATION PROJECTS

26 Sec. 206. (a) (1) In the case of a demonstration project  
27 which is proposed to be carried out under section 202 in a  
28 unit of employees represented by an exclusive  
29 representative--

30 (A) all factors of the performance appraisal system  
31 (during the development and implementation of such  
32 system),

33 (B) the provisions of the financial reward system  
34 authorized by section 204 (b) and the provisions for

1 funding step-increases in pay (if included in the  
2 system),

3 (C) any changes in reduction-in-force procedures,  
4 including the relative weight to be given performance  
5 appraisals and other factors in selecting employees for  
6 release under such procedures, and

7 (D) any other facet of the demonstration project (if  
8 raised by the exclusive representative),  
9 shall be negotiated with the exclusive representative.

10 (2) The total amount of step-increases in pay which may  
11 be the subject of negotiations pursuant to paragraph (1) (B)  
12 in any fiscal year may not exceed the amount which is equal  
13 to one and one-half percent of the maximum amount authorized  
14 by section 204 (c) (1) to be made in such fiscal year.

15 (3) Any subject which is required or authorized by this  
16 Act to be negotiated shall not be considered to be a  
17 management right under section 7106 of title 5, United States  
18 Code.

19 (b) In the case of a demonstration project which is  
20 proposed to be carried out by an agency under section 202 in  
21 a unit of employees which is not represented by an exclusive  
22 representative, the head of the agency or his designee shall  
23 consult with affected employees in the agency on the matters  
24 described in paragraphs (1) (A) and (1) (B) of subsection (a)  
25 and shall involve the affected employees in the development  
26 of the performance standards applicable to the employees in  
27 carrying out the performance appraisal system under the  
28 demonstration project.

#### 29 IMPASSE RESOLUTION

30 Sec. 207. (a) Any impasse in negotiations under section  
31 206 (a) shall be resolved as provided in subsection (b)  
32 within thirty days after the date on which either the agency  
33 or the exclusive representative declares an impasse.

34 (b) (1) In the case of a demonstration project to which

1 section 206 (a) applies, the agency and the exclusive  
2 representative affected by such project shall establish a  
3 panel to provide mediation and arbitration services with  
4 respect to impasses which are subject to resolution under  
5 this subsection. The panel shall be composed of three  
6 members, of whom one shall be appointed by the agency, one  
7 shall be appointed by the exclusive representative, and one  
8 shall be appointed by agreement between the agency and the  
9 exclusive representative or from a list of arbitrators  
10 provided by the American Arbitration Association. If the  
11 parties cannot mutually agree to the appointment of a  
12 Chairman, they shall strike alternate names from the list  
13 provided by the American Arbitration Association. The last  
14 remaining name on the list shall be the Chairman of the  
15 panel. The parties shall agree on the method to determine  
16 which party shall first strike a name from the list. Either  
17 party may change the member appointed by such party, if  
18 necessary, upon its own motion made before mediation or  
19 arbitration commences or upon the death of the member or upon  
20 the ill health or discovery of a conflict of interest  
21 certified to the parties by the member. Members of the panel  
22 for one demonstration project may also serve on panels for  
23 other demonstration projects.

24 (2) Any impasse in the negotiations required to be  
25 resolved pursuant to this subsection shall be forwarded to  
26 the Chairman of the panel.

27 (3) During the establishment phase of the experimental  
28 program, the Office and the affected exclusive  
29 representatives shall jointly request an appropriate number  
30 of lists of arbitrators from the American Arbitration  
31 Association in order that the lists be available for use by  
32 the agencies and the exclusive representatives when the  
33 agencies and exclusive representatives meet under section 209

34 (c) for negotiations on ground rules applicable to the



1 demonstration projects. The Association shall be advised that  
2 the arbitrators appointed from such lists shall be required  
3 to make themselves available for the resolution of impasses  
4 and unresolved disputes within the time frames provided by  
5 subsection (a) and section 229.

6 (4) The Chairman of the panel shall determine the  
7 procedures for resolving impasses submitted to the panel.

8 (5) Any impasse in the negotiations, including any  
9 assertion that the duty to bargain under this title does not  
10 extend to a particular proposal, shall be resolved by the  
11 panel, except for disputes on the ground rules for  
12 negotiations which shall be resolved solely by the Chairman.  
13 Any necessary decisions of the panel shall be made by  
14 majority vote and shall be final and binding upon the agency  
15 and the exclusive representative.

16 (6) Both parties shall comply with decisions of the panel  
17 or the Chairman, as the case may be. An appeal, exception, or  
18 other review of any such decision may not be made or  
19 requested from the Federal Labor Relations Authority, the  
20 Federal Service Impasses Panel, the Office, the Merit Systems  
21 Protection Board, any court, or any other administrative  
22 agency or judicial body, by the Office, the agency, or the  
23 exclusive representative.

24 (7) All costs of the panel shall be paid for by the  
25 agency, except that the exclusive representative shall pay  
26 the costs of the member of the panel appointed by the  
27 exclusive representative.

28 (c) Unless otherwise agreed upon after negotiation  
29 between an agency and the exclusive representative, any  
30 grievance or dispute involving the implementation,  
31 interpretation, administration, or enforcement of a  
32 negotiated agreement on any aspect of a demonstration project  
33 shall be resolved in the same manner as an impasse is  
34 resolved under subsection (b). The agency and the exclusive

1 representative may agree to an alternative grievance  
2 procedure, except that the procedure--

3 (1) shall meet the requirements of section 7121 (b)  
4 of title 5, United States Code;

5 (2) shall provide that the decision of the panel  
6 shall be final and binding on the agency and the  
7 exclusive representative and that the agency, the  
8 exclusive representative, and the Office may not file an  
9 appeal or exception with, or request a review by, any  
10 administrative or judicial body with respect to the  
11 decision of the panel;

12 (3) shall provide that the agency shall comply with  
13 the decision of the panel immediately upon the receipt of  
14 the decision; and

15 (4) shall provide that the agency shall pay the costs  
16 of the panel and the proceedings, except that the  
17 exclusive representative shall pay the costs of the  
18 member of the panel appointed by the exclusive  
19 representative.

20 (d) Any appropriate district court shall have  
21 jurisdiction of an action in the nature of a mandamus under  
22 section 1361 of title 28, United States Code, to enforce  
23 compliance with a decision of the panel with respect to a  
24 grievance or dispute to which subsection (b) (5) or (c)  
25 applies.

26 (e) Employees serving as representatives of the exclusive  
27 representative shall be considered to be on official time for  
28 all purposes while engaging in any activity relating to any  
29 aspect of the demonstration project or the negotiated  
30 agreement on a demonstration project, including the purposes  
31 of determining reasonable time for preparation and  
32 determining entitlement to necessary travel and per diem  
33 expenses.

34 REPORT

1       Sec. 208. (a) Promptly after the end of the first  
2 performance rating period provided under the experimental  
3 program carried out under section 202, the General Accounting  
4 Office shall evaluate the results of the experimental program  
5 and shall transmit to the Office and the Congress a report on  
6 its findings. The report shall include an evaluation of the  
7 cost of the systems provided under the experimental program,  
8 a comparison of such cost with the cost of the systems  
9 otherwise provided by law, the acceptability of the systems  
10 to employees and managers, the recommendations of the heads  
11 of agencies, employee organizations, and employees for  
12 changes or improvements in the systems, any unequal effects  
13 in the application of the systems to employees of several  
14 agencies or to the employees of several subdivisions of an  
15 agency, and the difficulties in administering the systems.

(b) Not later than three years after the date on which the experimental program commences, the General Accounting Office shall evaluate the results of the experimental program and shall transmit to the Office and the Congress a report on its findings. The report shall include the matters described in the second sentence of subsection (a).

(c) Not later than four months before the date on which the experimental program terminates, the Director of the Office shall transmit to the Congress a report on the experimental program. The report shall include (1) such recommendations for legislation as the Director considers appropriate to establish for all employees a system providing for financial rewards based on job performance and to improve reduction-in-force procedures and (2) all views on such recommendations furnished to the Director by any exclusive representative of a unit of employees included in the experimental program.

33 TIME REQUIREMENTS RELATING TO ESTABLISHMENT OF EXPERIMENTAL  
34 PROGRAM

1       Sec. 209. (a) Not later than ninety days after the date  
2 of enactment of this Act, the Office shall establish the  
3 experimental program required by section 202 and select the  
4 agencies to be included in the experimental program.

5       (b) (1) Not later than nine months after the date on  
6 which the experimental program is established as provided in  
7 subsection (a), each head of an agency included in the  
8 experimental program under section 202 shall further develop  
9 and carry out the demonstration project or projects under the  
10 experimental program in each unit of employees which is not  
11 represented by an exclusive representative.

12       (2) A demonstration project which is proposed to be  
13 carried out under the experimental program in a unit of  
14 employees represented by an exclusive representative shall be  
15 negotiated and carried out pursuant to the time schedules  
16 provided in subsection (c).

17       (c) (1) Not later than two weeks after the date on which  
18 the experimental program is established and the participating  
19 agencies are selected as provided in subsection (a), each  
20 agency and exclusive representative concerned shall meet to  
21 negotiate ground rules for conducting the negotiations  
22 authorized by section 206 (a) and to select a panel as  
23 provided in section 207 (b). If the ground rules cannot be  
24 resolved within three calendar days after the date on which  
25 the meeting commenced, the parties shall submit the impasse  
26 issues to the Chairman of the panel for resolution. Within  
27 two weeks after the date on which the impasses issues are  
28 submitted to the Chairman of the panel, or as soon thereafter  
29 as possible, the Chairman shall meet with the parties for not  
30 more than one day. The Chairman shall issue any necessary  
31 decision within 48 hours after meeting with the parties.

32       (2) Not later than ninety calendar days after the date on  
33 which negotiations on the ground rule are completed, the  
34 parties shall meet for the negotiations required by section

1 226 (a). The negotiations shall be scheduled for not less  
2 than five days each week except during weeks which include  
3 holidays and except for such recesses as are mutually agreed  
4 to by the parties. The negotiations shall be carried out  
5 until the date on which agreement is reached by the parties,  
6 the date which is ninety calendar days after the date on  
7 which the negotiations commenced, or the date on which an  
8 impasse is declared by either party, whichever is earlier.  
9 Within one week after the date on which the ninety-day period  
10 for negotiations expires without agreement on the matters  
11 under negotiation or the date on which an impasse is  
12 declared, whichever is earlier, the parties shall notify the  
13 Chairman of the panel that an impasse exists. Within three  
14 weeks after the date on which the Chairman of the panel is  
15 notified of the impasse, or as soon thereafter as is  
16 possible, the Chairman shall convene the panel and meet with  
17 the parties for the purpose of resolving the impasse. The  
18 impasse shall be resolved not later than thirty days after  
19 the date on which the panel convened.

20 (3) The project shall be implemented within thirty to  
21 sixty calendar days after the date on which the parties agree  
22 on the provisions of the project required by section 206 (a)  
23 to be negotiated or a decision of the panel on an impasse in  
24 the negotiations on such provisions is issued. Section 7114  
25 (c) of title 5, United States Code, does not apply to  
26 agreements reached under this Act.

#### 27 TERMINATION

28 Sec. 210. The experimental program carried out under  
29 section 202 shall terminate forty-five months after the date  
30 of enactment of this Act.

#### 31 TITLE III--EFFECTIVE DATE; SAVINGS PROVISIONS

32 Sec. 301. The amendments made by sections 101 and 105 of  
33 this Act shall take effect on the first day of the first  
34 applicable pay period commencing after the first September 30

1 following the date of the enactment of this Act.

2 SAVINGS PROVISIONS

3 Sec. 332. (a) An employee whose position was covered by  
4 the merit pay system (under chapter 54 of title 5, United  
5 States Code, as in effect on the day before the effective  
6 date of the amendments made by title I) immediately before  
7 the effective date of the amendments made by sections 101 and  
8 105, but is determined not to be covered by the performance  
9 management and recognition system (under such chapter as in  
10 effect on the effective date of such amendments) as a result  
11 of this Act shall be converted on such effective date to the  
12 General Schedule in accordance with regulations issued by the  
13 Office of Personnel Management pursuant to section 5334(a) of  
14 this title.

15 (b) The rate of basic pay for any employee whose position  
16 was covered by the merit pay system referred to in subsection  
17 (a) immediately before the effective date of the amendments  
18 made by sections 101 and 105 and is determined to be under  
19 the performance management and recognition system referred to  
20 in subsection (a) as a result of such amendments shall be at  
21 least equal to the rate of basic pay payable for the position  
22 held by such employee immediately before the effective date  
23 of such amendments.

Amend the title so as to read as follows: "A bill to  
amend title 5, United States Code, to reform the merit pay  
system by providing for a performance management and  
recognition system for certain Federal employees, to require  
the establishment of performance appraisal systems for  
employees covered by the performance management and  
recognition system, and to increase flexibility in the  
management of senior executives; to require the establishment  
of a experimental program relating to pay for performance in  
Civil Service; and for other purposes.